

**7x ranking on
100 Best Companies
to Work For list**

– Fortune

**Cybersecurity + Privacy
Practice Groups
of the Year**

– Law360

Top-Tier Firm

– Managing Intellectual Property

**100% on Corporate
Equality Index**

– Human Rights Campaign Foundation

**Tech + Capital Markets
Practice Groups
of the Year**

– Law360

Cooley

Cooley LLP

Koji Fukumura, Partner, and Jessica Valenzuela Santamaria, Partner— Securities Litigation

Koji Fukumura is a partner in Cooley's Securities Litigation practice and serves on the firm's board of directors. His practice focuses on complex commercial litigation, including the defense of securities class actions, derivative suits, M&A-related class actions, and government investigations. He also regularly conducts internal investigations for boards as well as their audit or special litigation committees. Koji is a past chair of Cooley's Securities Litigation practice and the ABA Section of Litigation.

Jessica Valenzuela Santamaria is a member of the firm's Fall Recruiting Committee, and her practice focuses on securities, corporate governance, and other complex business litigation, including the defense of securities class actions, derivative suits, and M&A-related class actions. In addition to representing clients in state and federal courts, she also represents companies, boards, and special committees in government and internal investigations and counsels public and private companies and their directors and officers about a wide range of issues relating to corporate governance, insider trading, disclosure obligations, director and executive compensation matters, and litigation risk and strategy.

Describe your practice area and what it entails.

Koji: I am a securities litigator and counselor. I defend public companies and their officers and directors who are targeted by stockholders, regulators, or the U.S. Department of Justice. I also counsel public and private company boards of directors on a wide range of corporate governance matters and conduct internal investigations for company boards of directors or their committees.

Jessica: I am a securities litigator. The vast majority of my practice entails representing companies and their directors and officers in disputes involving shareholders or corporate governance matters. This includes claims under the federal securities laws and claims for breach of fiduciary duty (typically under Delaware law). I also represent clients with respect to regulatory activity initiated by the Securities and Exchange Commission. My clients also seek my advice to help avoid disputes in the first place, and I often counsel public companies regarding disclosure obligations and compliance with federal securities laws.

What types of clients do you represent?

Koji: I represent innovators, which, in many ways, is natural because innovators are the life blood of Cooley's client base. Clients include companies involved in technology (e.g., semiconductors, software development, video game development, internet commerce, IT infrastructure, and device

development) and life sciences (e.g., drug/therapy discovery and development, medical devices, and health care-related products and services). Examples of our tech and life sciences clients include Qualcomm, Activision Blizzard, Horizon Therapeutics, Acadia Pharmaceuticals, and CD Projekt Red. I have also represented large non-tech clients like GNC Holdings, Rivera Holdings, Charlotte Russe, Hot Topic, and Guess.

Jessica: At Cooley, I represent companies that disrupt traditional industries and business models. Most of my clients are in the tech space—enterprise software providers, development-stage pharmaceutical companies, and internet or mobile-app-based businesses, to name a few.

What types of cases/deals do you work on?

Koji: I regularly defend clients who are defendants in representative actions, like class actions and shareholder derivative suits. The class actions are typically brought under the federal and state securities laws, rules, and regulations or under state laws governing the duties of officers and directors. This includes traditional "securities fraud" class actions as well as class actions for breach of fiduciary duty or some other state or federal law duties related to mergers and acquisitions. Over the years, I have defended more than 70 shareholder representative actions (class actions and derivative suits), 50 M&A transactions, and almost 100 regulatory/government investigations or inquiries.

Jessica: I defend mostly public companies and their directors and officers who have been accused of violating federal securities laws, breaching a fiduciary duty, or otherwise harming their shareholders. These claims may be based on allegedly false or misleading disclosures made to investors, they may arise out of actions taken by boards of directors (such as approving merger transactions or executive compensation), or they may be based on a theory that the board should have prevented some event that caused the company's stock price to drop (such as a data breach, a failed clinical drug trial, or poor business performance).

How did you choose this practice area?

Koji: In my first year of practice, I defended an institutional investor in an SEC investigation—which morphed into a civil enforcement action. Within a few years, I defended a number of other clients in SEC investigations and enforcement actions. Early on, therefore, I found myself immersed in bet-the-company or livelihood (in the case of an individual) matters. As I reflected on what I wanted to focus my career on, it occurred to me that SEC enforcement and the defense of private securities litigation, unlike other practice areas where government enforcement depended on the occupant of the White House, was always going to be an active practice area. It was the right decision.

Jessica: This practice area chose me. I had no intention of being a securities litigator. As a junior associate, however, there was an influx of shareholder lawsuits filed against Silicon Valley public companies arising out of the way that the companies accounted for employee stock options. In the span of a couple years, I was exposed to nearly every facet of a securities litigation practice—shareholder class action lawsuits, breach of fiduciary duty lawsuits, SEC investigations, and internal corporate investigations. I loved the work, and I have never looked back.

What is a typical day like and/or what are some common tasks you perform?

Koji: My typical day is a mix of counseling and litigation. I frequently field questions on federal securities regulation or corporate governance from clients or my business partners. Many of these questions require on-the-spot answers or jumping on with a client or the board of a client to handle an emergency or time-sensitive question. On the litigation side, I am truly fortunate to work with teams of lawyers who are now experts in the defense of securities and corporate governance-related matters. I help develop strategy and arguments and generally try to stay out of the way and not micromanage these well-led teams until it is time for oral argument or a contested

hearing. This frees me up to help generate business by interacting with a host of different constituencies that help bring us new cases.

Jessica: As about half of federal securities lawsuits are dismissed at the pleading stage, the motion to dismiss is one of the most important events in the life of a lawsuit. As a result, the practice involves a significant amount of brief-writing. Precedent is important, so I am constantly reading new judicial opinions to stay on top of developments in the law. As I also advise public companies about their public disclosures and compliance with SEC reporting, I spend a lot of time reading and reviewing SEC filings, investor communications, press releases, and other disclosures.

What training, classes, experience, or skills development would you recommend to someone who wishes to enter your practice area?

Koji: At bottom, we are litigators. Our craft is persuasion. Yes, we have specialized knowledge of the relevant laws, rules, and regulations, but all of that knowledge is ascertainable with diligence and effort. What cannot be learned from a book, though, is how to be an effective advocate—not only orally but, more importantly, in writing. Writing is the foundation of effective advocacy. Accordingly, if I were going to give someone advice, I would tell them to focus on developing their skills as a writer.

Jessica: While no particular training or background is necessary (I was an English major), an understanding of capital markets, corporate securities, and how investors value public company stock; a general background in public company accounting; the ability to read and understand financial statements and a familiarity with basic SEC reporting; and a class on Delaware law corporate governance would provide a good foundation for a securities litigation practice.

What is the most challenging aspect of practicing in this area?

Koji: The most challenging aspect of our practice is to reduce complex technology or science into concepts or a story that is accessible to judges and their law clerks. Whether it is explaining issues relating to the development of a semiconductor chip, problems with a complex device like a 3D printer, or the failure of a drug candidate in its clinical trials, there is a delicate balance between explaining everything and explaining just what is essential so that the court or a jury understands what is truly important.

Jessica: Being asked to give thoughtful advice about a complex, nuanced issue at a moment's notice. A public company

might have a crisis that implicates federal securities laws and disclosure issues at any time. They need to make a decision quickly, and there isn't always a clear answer.

What do you like best about your practice area?

Koji: I love learning about what our clients do. I have a background in molecular biology and naturally gravitate towards biotech companies. We have clients with cutting-edge small molecule (ingestible drugs) and large molecule (complex proteins having therapeutic effect that are usually injected or infused) technology, which absolutely fascinates me. Having said that, I enjoy equally learning about semiconductors or devices (handheld/tablet) or other technologies that we rely on in every facet of our modern life. Every new case is an opportunity to learn about the amazing things our clients are working on.

Jessica: I am in the boardroom and in the C-suite advising the people who make the decisions that drive our economy and impact the lives of millions of people—employees, investors, and consumers who use their products. It would be hard to find someone in the U.S. who our clients' products and services have not impacted in some way.

What is unique about your practice area at your firm?

Jessica: Cooley's client base comprises innovators who have products and businesses that are disruptive and novel. As trailblazers, they often operate within a legal and regulatory structure that was not designed for them. As a result, they

face legal issues for which there is no precedent. These types of forward-thinking companies require forward-thinking lawyers who are creative, can think outside the box, and can help our clients develop their own paths and sometimes transform the law.

How important is it for securities litigators to have a business background and understanding of corporate law, and what should junior attorneys do if they don't?

Koji: Focusing on business corporations, securities regulation, and corporate governance during law school will definitely give a lawyer a head start. So too will an understanding of how business corporations operate, generally, and of subjects like finance and economics. I, however, did not focus on any of those subjects during law school. I wanted to be a criminal defense lawyer. So, there is no "set" background that a lawyer needs to have to succeed as a securities litigator. As a junior lawyer, I took it upon myself, on my own time, to learn about securities regulation (I literally read the key statutes and regulations on my own) and developed my understanding of business over the course of almost 30 years doing this type of work.

What I tell junior associates is that the law is not a job, it is a profession; it is your craft. Find ways to make yourself more knowledgeable. Read a legal blog every couple of days in your practice area so that you are armed with the most current cases and thought leadership. This will allow you to think more expansively about cases and assignments and allow you to participate more meaningfully in group discussions.

COOLEY LLP

“Every new case is an opportunity to learn about the amazing things our clients are working on.”

Koji Fukumura, Partner